



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 15, 1992

Mr. Alexis A. Walter III
Legal Department
The City of Bryan
P. O. Box 1000
Bryan, Texas 77805

OR92-300

Dear Mr. Walter:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15341.

The Brazos Animal Shelter (the "shelter") has received a request for a computerized "download" of information relating to dogs licensed in the counties and municipalities under its authority, including, but not limited to, the owner's name and address, and the name, breed, age, sex, and color of the dog. This information is provided to the shelter by veterinarians pursuant to section 4-47 of the Bryan City Code. The requestor has subsequently informed us that she does not seek information that identifies the veterinarian or the veterinary clinic from which the information originated. You claim that the requested information is excepted from required public disclosure by sections 3(a)(4) and 3(a)(10) of the Open Records Act.

Section 3(a)(4) excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect governmental interests in commercial transactions. Open Records Decision No. 541 (1990). You do not indicate how the requested information relates to a competitive bidding situation or to a commercial transaction to which the city is party. Accordingly, you may not properly invoke the section 3(a)(4) exception.

Section 3(a)(10) excepts from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information

obtained from a person and privileged or confidential by statute or judicial decision. You claim that the requested information constitutes a trade secret. The Texas Supreme Court has adopted the definition of trade secret from the Restatement of Torts, section 757, which holds a trade secret to be

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers.

Hyde Corp. v. Huffines, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. The Restatement lists six factors to be considered in determining whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939). These factors are indicia of whether information, including customer lists, constitutes a trade secret; depending on the information being considered, one factor alone may be indication of a trade secret. *See* Open Records Decision Nos. 552 at 3; 494 (1988) (citing *Expo Chemical Co.*,

Inc. v. Brooks, 572 S.W.2d 8 (Tex. Civ. App.--Houston [1st Dist.] 1978), *rev'd on other grounds*, 576 S.W.2d 369 (Tex. 1979)).

You advise us that the pet ownership and breed information obtained by the veterinarians and shared with the shelter constitutes a part of the veterinarians' client base. You also contend that the requested information is of value to the veterinarians' practices and that its release would "enable other veterinarians to notify pet owners of impending license renewal dates, and to cause pet owners to switch from the veterinarian who initially vaccinated and licensed their pet" and would thus cause veterinarians participating in the vaccination/licensing program substantial competitive harm. Submissions we have reviewed from veterinarians in your area, including letters from representatives of the Brazos Valley Area Texas Veterinary Association and Texas A & M University's College of Veterinary Medicine, also assert that veterinarians safeguard the secrecy of the requested information because it is made confidential by a rule promulgated by the Texas State Board of Veterinary Medical Examiners. *See* 22 T.A.C. § 573.27 ("A licensed veterinarian shall not violate the confidential relationship between self and client."). Accordingly, we conclude that you have demonstrated that the requested information satisfies the definition of a trade secret in the Restatement of Torts, *supra*, and that you have made a *prima facie* case for establishing a trade secret. The requested information may be withheld from required public disclosure under section 3(a)(10).


Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-300.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GK/lmm

 Ref.: ID# 15341
ID# 15584
ID# 15987
ID# 16002
ID# 16071
ID# 16086
ID# 16139
ID# 16149

cc: Ms. Stephanie Clark
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